Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:FS:HAR:POSTF-150041-01
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date: September 27, 2001

to: Appeals Team Case Leader, Paul E. Sandor, CT/RI Appeal Office

from: Associate Area Counsel, LMSB, Area 1, Hartford, CT

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subject: [redacted]
(Income taxes for [redacted] - [redacted])

This memorandum responds to your request for assistance dated July 31, 2001. This memorandum should not be cited as precedent.

ISSUE

Who is the proper party to sign a consent to extend the statute of limitations for assessment (Form 872 - Consent to Extend the Time to Assess Income Tax) for the income tax liabilities (Forms 1120L) of [redacted] for the taxable years [redacted] - [redacted]?
UIL. No. 6501.08-10.

CONCLUSION

It is our opinion that an officer of [redacted] is the proper party to execute the Form 872 for the taxable years [redacted] - [redacted], as alternative agent for [redacted], formerly known as [redacted].

FACTS

[redacted] ("[redacted]") was the common parent, (i.e., the [redacted] domestic corporation), of a consolidated group from at least [redacted] through [redacted]. Effective [redacted], pursuant to the provisions of [redacted], [redacted] converted from a mutual life insurance company into a stock life insurance company. [redacted]'s name was changed to [redacted] ("[redacted]"), and as part of the demutualization [redacted] became a wholly owned subsidiary of [redacted], a publicly traded holding company. In documents filed with the

[redacted]

DISCUSSION

In general, section 6501(a) provides that the Service has three years from the date a tax return is filed to assess additional tax liabilities.[3/] In addition, under section 6501(c)(4), the Service and a taxpayer may consent in writing to an extension of the time for making an assessment, if the consent is executed before the expiration of the normal period of assessment, or the extension date agreed upon in a prior valid extension agreement between the parties.

Section 6061 provides that any return, statement or other document made under any internal revenue law must be signed in accordance with the applicable forms or regulations. The regulations under section 6501(c)(4) do not specify who may sign consents to extend the time to assess tax. Accordingly, the Service applies the rules applicable to the execution of the original returns to the execution of consents to extend the time to make an assessment. Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

[1/] All statutory references are to the Internal Revenue Code in effect during the years at issue unless otherwise noted.

[2/] In rendering our opinion we have relied upon the following documents: (i) [redacted]; (ii) letter dated [redacted], from [redacted]'s counsel, [redacted], to the [redacted]; (iii) two letters dated [redacted], from [redacted] to the Board of Directors for [redacted]; (iv) letter dated [redacted], from [redacted] to Appeals Team Chief Sandor, which includes an organizational chart; and, (v) letter dated [redacted], from [redacted] to Appeals Team Chief Sandor.

[3/] Returns filed before their due date are deemed filed on the last date for filing. Section 6501(b)(1).

In general, the common parent is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the income tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent, in its name, will give waivers, and any waiver so given shall be considered as having also been given or executed by each subsidiary in the consolidated group. Treas. Reg. § 1.1502-77(a). However, the general rule that the common parent is the sole agent for the group does not apply under certain circumstances, such as when the common parent goes out of existence, or ceases to be the common parent of a continuing consolidated return group. Treas. Reg. § 1.1502-77(d). It is therefore critical to determine if [redacted] went out of existence, or ceased to be the common parent of a continuing consolidated return group as a result of the demutualization transaction.

The recent deluge of demutualizations has been spurred in large part by the passage of the Gramm-Leach-Bliley Act in 1999. This Act made mergers that combine commercial banks, insurers and securities firms under one holding company possible. A mutual insurance company has policyholders instead of shareholders. Each policyholder owns an equity interest in the company, and is also a customer, who owns an insurance policy that provides insurance coverage. A demutualization is a change in the status of the company from a mutual to a stock company. By converting to a stock insurance company, and becoming a subsidiary of a holding company that also owns bank and securities businesses, the insurance company will have greater access to the capital markets, and will be able to obtain capital from a variety of sources.

A demutualization can be accomplished in a number of ways: (i) a statutory conversion; (ii) a merger; and, (iii) a transfer of the mutual insurer's business to a stock subsidiary by means of an assumption reinsurance transaction and dissolution of the mutual insurer.[4/] The method chosen is often heavily influenced by the state law where the company is domiciled. [redacted] was domiciled in [redacted], and [redacted]

[redacted]

[4/] Burstein, Federal Income Taxation of Insurance Companies, p. 309 (1996).

[5/] [redacted]

[redacted]

Based on the foregoing, it is our opinion that [redacted] did not go out of existence as a result of the demutualization transaction, but instead continued its existence as [redacted]. Furthermore, although the affiliated group survived, [redacted] is now the common parent with [redacted] as one of its subsidiaries.

Since [redacted] is no longer the common parent, it is no longer the sole agent for the group under Treas. Reg. § 1.1502-77(a). And although Treas. Reg. § 1.1502-77(d) allows the common parent to designate, subject to approval of the Service, another member to act in its place, [redacted], formerly [redacted], did not make such a designation. This regulation also provides that when, as here, the common parent makes no designation for a member to act in its place, the remaining members of the group for a consolidated return year may designate a member to act as the new agent. This power is seldom used because it is unwieldy and impractical except in groups with few members.[6/]

[6/] Because of these problems it was eliminated in the regulations issued in September of 2000. See, Notice of Proposed Rule making to Amend § 1.1502-77 (REG-103805-99), 65 Fed. Reg. 57755 (September 26, 2000); 2000-42 I.R.B. 376 (October 16, 2000).

Who then can extend the statute of limitations for assessment of the income tax liabilities? For an answer to this conundrum we must turn to Temp. Reg. § 1.1502-77T.[7/] This regulation was enacted to provide flexibility to both the taxpayer and the Service to choose among several possible alternative agents. It applies if the corporation that is the common parent of the group ceases to be the common parent, whether or not the group remains in existence under Treas. Reg. § 1.1502-75(d). It provides that a waiver of the statute of limitations given by any of the following corporations is deemed to be given by the agent for the group:

1. The common parent of the group for all or any part of the year to which the waiver applies;
2. A successor[8/] to the former common parent in a transaction to which section 381(a)[9/] applies;
3. The agent designated by the group; or,
4. If the group remains in existence under Treas. Reg. §§ 1.1502-75(d)(2) or (3), the common parent at the time the waiver is given.[10/]

Based on the forgoing, it is our opinion that [redacted] is an alternative agent under Temp. Treas. Reg.

[7/] The temporary treasury regulation is controlling for the years [redacted] - [redacted] since the proposed treasury regulations apply to consolidated return years beginning after the date of publication in the final regulations in the Federal Register. See Notice of Proposed Rule making to Amend § 1.1502-77 (REG-103805-99), 65 Fed. Reg. 57755 (September 26, 2000); 2000-42 I.R.B. 376 (October 16, 2000).

[8/] Under the proposed treasury regulations a successor is a party that is primarily liable under applicable law, (including state or Federal merger statutes), for the tax liabilities of the common parent or any subsidiary of the group. Prop. Treas. Reg. § 1.1502-77(a)(1).

[9/] Section 381(a) applies to an acquisition of assets of a corporation by another corporation in a distribution to the corporation to which section 332 (relating to liquidations of subsidiaries) applies; or in a transfer to which I.R.C. § 361 (relating to non recognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in subparagraphs (A), (C), (D), (F), or (G) of § 368(a)(1).

[10/] See Temp. Treas. Reg. § 1.1502-77T(a)(4).

§§ 1.1502-77T(a)(3)and(4) as the common parent of the surviving group at the time the waiver is given. As such, an officer of [redacted] can execute the Form 872. We recommend this form should be captioned, "[redacted], as alternative agent, or as successor to, [redacted], formerly known as [redacted] *". We believe the Form 872 caption should also include the above asterisk (*) to refer to the following information that should be provided on the bottom of the front page of the form: "With respect to the consolidated tax liability of [redacted], formerly known as [redacted]."

We are simultaneously submitting this memorandum to the National Office for post-review and any guidance they may deem appropriate. Consequently, you should not take any action based on the advice contained herein during the 10-day review period. We will inform you of any modification or suggestions, and, if necessary, we will send you a supplemental memorandum incorporating any such recommendation.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

Please call Joseph F. Long at (860) 290-4090 if you have any questions or require further assistance.

BRADFORD A. JOHNSON
Associate Area Counsel
(Large and Mid-Size Business)

By:_____
JOSEPH F. LONG
Attorney (LMSB)

Attachment: As stated.